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Supreme Court, U.S.
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No. 02-1677

In the Supreme Court of the United States

VOLKSWAGEN OF AMERICA, INC., ET AL.,

Petitioners,

v.

NATHANIEL TRULL, ET AL.,

Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the First Circuit

SUPPLEMENTAL APPENDIX TO PETITION FOR A WRIT OF CERTIORARI

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APP

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Order denying defendant's motion for reconsideration
(U.S.D.C. N.H. June 2, 2001) 1

UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF NEW HAMPSHIRE

Nathaniel Trull, et al.

v. Civil No. 94-015-JD

Volkswagen of America, et al.

ORDER

Defendant's motion for reconsideration (document no. 241) is denied. The court notes the following in addition to what it has previously stated in its order of June 6, 2001 (document no. 239).

The defendant had ample opportunity to raise the issue of inconsistent verdicts during the charging conference when the instructions following question one (strict liability) on each verdict blank were discussed. Those instructions directed the jury to answer question three (negligence) if they answered "No" to question one (strict liability). Under the defendant's theory of inconsistent verdicts, the jury should have been instructed to conclude their deliberations if they answered "No" to question one, and when the court failed to do so, the defendant should have objected to the instructions following question one in accordance with the requirement of Fed. R. Civ. P. 51. The defendant failed to make such an objection.

Under the negligence claim, the jury was instructed to evaluate the conduct of the defendant in designing and testing the vehicle in question in light of certain applicable legal standards. There was sufficient evidence from which a reasonable jury could find that the defendant's conduct was negligent in designing the vehicle. In addition, there was sufficient evidence from which a reasonable jury could find that the defendant was negligent in testing the vehicle in question.

With respect to the test reports in the German language offered into evidence by the defendant and which the court did not admit into evidence, the defendant has not addressed the circumstances under which these tests were purportedly admitted in the first trial nor has the defendant cited the court to the record in the first trial in support of its position on this issue. It is not the obligation of the court to scour the record on the defendant's behalf. However, notwithstanding what may have happened in the first trial, the fact is that in the second trial the plaintiffs raised a valid objection to admissibility of these tests, the court stated its reasons for excluding them, and the defendant made no attempt to overcome the obstacle to their admissibility.

The defendant has also filed a motion for leave to file a supplemental motion to defendant's motion for reconsideration (document no. 252). The motion is granted. In its supplemental motion the defendant attempts to compare the jury instructions and special verdict form used in *Wilson v. Bradlees*, 250 F.3d 10 (1st Cir. 2001), with those used in this case. Suffice it to say that the approach used in the *Wilson* case was different from that used in this case and for that reason comparison of the two cases is inapposite.

SO ORDERED.

s/Joseph A. DiClerico, Jr.
Joseph A. DiClerico, Jr.
District Judge

July 2, 2001

cc: John J. Cronin, III, Esquire
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